



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,791	01/22/2002	Katsuya Tsunogai	JP920000423US1	4276
45092 7590 09/28/2010 HOFFMAN WARNICK LLC 75 STATE ST 14TH FLOOR ALBANY, NY 12207				
EXAMINER ALAM, UZMA				
ART UNIT 2457		PAPER NUMBER		
NOTIFICATION DATE 09/28/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOCommunications@hoffmanwarnick.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KATSUYA TSUNOGAI

Appeal 2009-006327
Application 10/053,791
Technology Center 2400

Before JOHN C. MARTIN, CARL W. WHITEHEAD, JR.,
and BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

MARTIN, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 3-5 and 27-36, which are all of the pending claims.

We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

A. Appellant's invention

Appellant's invention is a system and method for connecting clients to a heavily loaded server according to connection priority. Specification [0001].²

Figure 1 is reproduced below.

² Because the Application as filed does not contain paragraph or line numbers, citations herein to the Specification are to corresponding Patent Application Publication 2002/0099831 A1.

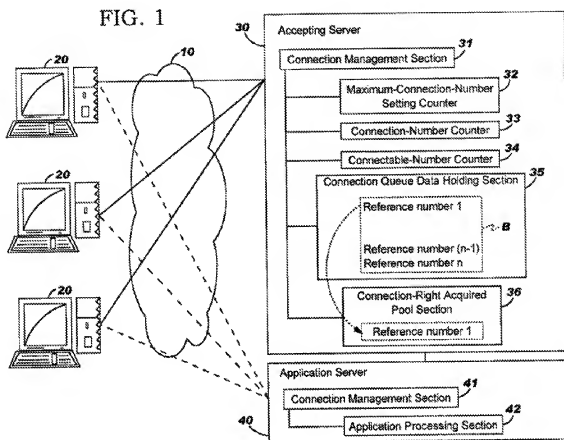


Figure 1 is a block diagram showing a construction of a connection accepting system in a preferred embodiment of Appellant's invention (*id.* at [0027]).

Accepting server 30 manages access by client terminals 20 via network 10 to application server 40 (*id.* at [0040]). Accepting server 30 includes three counters: (a) a maximum-connection-number setting counter 32 that stores a count representing the maximum number of connections that can be connected simultaneously to application server 40; (b) a connection-number counter 33 that indicates the number of client terminals 20 currently connected to the application server; and (c) a connectable-number counter 34

that indicates the number of client terminals 20 that can be connected to the application server (*id.* at [0041]).

If a client terminal sends a connection request when there is no currently available connection capacity at server 40 (i.e., the number in connectable-number counter 34 is “0”), server 30 generates a reference (i.e., priority) number that is stored in a connection queue data holding section 35 (*id.* at [0042], [0050], [0051]). This reference number can take the form of, for example, “YYYYMMDD#n,” where Y indicates the year, M indicates the month, D indicates the day, and n indicates a number issued in sequence on the day of its issue (*id.*). Server 30 also sends data (e.g., as a cookie) including this reference number to the requesting client terminal 20 (*id.* at [0053]). The client terminal, based on this data, “displays messages (information on the connection priority), such as ‘Crowded now,’ ‘You can log in the order of (\$Order) of (\$Queue Size) people,’ ‘Your reference number is (\$DTX_Ticket),’ etc.” (*id.* at [0054]).

The data received by this client terminal from server 30 also includes source code that causes the client terminal to automatically send another connection request to server 30 after a predetermined time period set by server 30 (*id.* at [0055]-[0056]). This “rerun of connection request” is accompanied by the cookie data that represents the reference number previously received by the client terminal from server 30 (*id.* at [0063]).

When a connection by a client terminal is released, the reference number with the highest connection priority in the connection queue B is transmitted to the connection-right acquired pool section 36 (*id.* at [0062]).

The corresponding client terminal will be permitted to make a connection the next time it automatically reruns a connection request (*id.* at [0063]-[0065]).

B. Claim 3

Claim 3, the sole independent claim, reads as follows:

3. A server for accepting connection requests from client terminals through a network, comprising:

a connection-order setting unit which, upon receiving a first connection request from a first client terminal of said client terminals, sets an order of connection for said first client terminal; and

a connection managing unit for allowing connection of said client terminals according to said order of connection, upon receiving a second connection request from a second client terminal of said client terminals after said first connection request;

wherein a program for automatically executing said second connection request again after a predetermined time interval is transmitted to said client terminal to which said order of connection has been set.

Claims App. (Br. 6).

C. The references

The Examiner's rejections are based on the following references:

Bhoj	US 6,742,016 B1	May 25, 2004
Roberts	US 6,754,693 B1	Jun. 22, 2004

D. The rejection

Claims 3-5 and 27-36 stand rejected under 35 U.S.C. § 103(a) for obviousness over Bhoj in view of Roberts. Final Action 2.

THE ISSUE

The sole issue raised by Appellant's arguments is whether the Examiner erred in finding that Roberts discloses the subject matter recited in the "wherein" clause of claim 3.³

ANALYSIS

In the rejection of claim 3, the Examiner relies on Bhoj for the recited "connection-order setting unit" and "connection managing unit" and relies on Roberts for the subject matter recited in the "wherein" clause. Final Action 2-3. Appellant questions only the Examiner's reliance on Roberts.

In the Final Action (at page 3), the Examiner found that "Roberts teaches . . . a program for automatically executing said second connection request again is transmitted to said client terminal to which said order of connection has been set (column 10, lines 7-38; column 16, lines 40-67)." Appellant responded to this finding by arguing that

³ See *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) ("If an appellant fails to present arguments on a particular issue — or, more broadly, on a particular rejection — the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection."). Designated precedential at
(Continued on next page.)

the sections of Roberts cited by the Examiner, as well as Roberts taken as a whole, do not disclose, *inter alia*, “wherein a program for automatically executing said second connection request again after a predetermined time interval is transmitted to said client terminal to which said order of connection has been set.” On the contrary, none of the applets downloadable by the server 20 in Roberts to a user computer 12 provides this functionality.

(Br. 5.) The Examiner, in the Answer, responded by additionally relying on other parts of Roberts (*viz.*, column 20, lines 56-60; column 15, lines 21-35; column 21, lines 60-67) and explaining why the “wherein” clause is believed to read on this newly cited material (Answer 10-11). For example, the Examiner explains that

[t]he subsequent polling of a server to check status in the queue reads on the limitation of “executing said second connection request again.” When the user computer 12 polls the server the applet 22 continues to poll the server 20 for the call request status 244 (column 21, lines 60-67), it is executing the connection request again.

(Answer 11.) Appellant, who did not file a reply brief, has not pointed out any error in the Examiner’s reliance on these additional parts of Roberts.

We therefore sustain the rejection of claim 3 as well as the rejection of dependent claims 4, 5, and 27-36, which are not specifically argued. *In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987).

Appeal 2009-006327
Application 10/053,791

DECISION

The Examiner's rejection of claims 3-5 and 27-36 under 35 U.S.C. § 103(a) for obviousness over Bhoj in view of Roberts is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(v) (2009).

AFFIRMED

gvw

HOFFMAN WARNICK LLC
75 STATE STREET
14TH FLOOR
ALBANY, NY 12207